



**Trillion Partners, Inc.  
9208 Waterford Centre Blvd., Suite 150  
Austin, Texas 78758**

June 23, 2010

Ms. Pina Portanova  
USAC Schools and Library Division  
Universal Service Administrative Company  
2000 L Street, N.W., Suite 200  
Washington, D.C. 20036  
pportan@sl.universalservice.org

*Delivered via email*

Federal Communications Commission  
Attention: Gina Spade, Deputy Division Chief  
Telecommunications Access Policy Division  
445 12th Street SW  
Washington, DC 20554

*Delivered via Electronic Comments Filing System*

RE: Response to USAC and Appeal to FCC: Okanogan School District 105 letter dated June 9, 2010

Dear Ms. Portanova and Ms. Spade,

On behalf of the Board, investors and management team of Trillion Partners, Inc., please accept this response to the Intent to Deny Letter from USAC to Okanogan School District 105 dated June 9, 2010. Additionally, please accept this letter as a simultaneous appeal to the FCC of the Intent to Deny, requesting that all of the applications as referenced in such letter be approved for funding.

Due to the magnitude of the proposed denial and the substantial delay in the issuance of USAC's currently proposed intent to deny, Trillion and all of its affected customers are under a severe hardship and request expedited resolution of this matter.

Trillion Partners is responding to this letter because students Washington will likely be denied crucial educational access. Trillion constructed a network with its customers relying on the consistent approvals by USAC in years past. The approval of this application is needed in order to continue to support these children who rely every school day on Trillion's embedded investment of this broadband asset.

During a phone conference on June 9, 2010, Mr. Scott Barash indicated that our comments would be accepted and included as part of USAC's review of the application. This must in no way be considered a delay in the FCC's immediate consideration of this urgent appeal.

## Background

Okanogan School District 105 is located in Okanogan, WA, where they service a small rural district including five sites. They have been a Trillion customer since 2004.

## Response to Questions

Date: June 9, 2010

Cari Shiflett

OKANOGAN SCHOOL DISTRICT 105

Application Number(s) : FY2009- 670813 FRN # 1830991

FY2010- 743680 FRN # 2007488

Response Due Date: June 24, 2010

We are in the process of reviewing your funding requests with Trillion Partners, Inc. to ensure that they are, in compliance with the rules of the Universal Service program.

Based on the documentation that has been provided to USAC, the entire FRNs listed above will be denied because OKANOGAN SCHOOL DISTRICT 105 did not conduct a fair and open competitive bidding process. The Form 470 associated with all the FRNs listed above was posted on December 21, 2007 with an Allowable Contract Date of January 18, 2008. The documentation indicates that Cari Shiflett engaged in e-mail discussions and/or verbal discussions with Trillion employees on the same day the 470 was posted which resulted in the award of the 5 year contract to Trillion on January 30, 2008. These email exchanges suggest you did not intend to entertain bids and have a fair and open competitive bidding process. It also suggests Trillion was intimately involved in developing the specifications you would seek on your Form 470 and perhaps was involved in the drafting of the language to be used in the Form 470.

Specifically, in several emails exchanged on December 21, 2007, the same day you posted your Form 470, it is indicated that you were advised to file a new Form 470 to renew your 5 year contract one year early. Later, you emailed Trillion representative, Jennifer Carter, and asked "In the description I put Wide area network service/voice and data. Is that okay?" to which Jennifer inquired about your intentions, "...adding new services or just continuing on with the existing services?" you responded, "We want to keep our existing services, but renew our contract a year early for another 4 or 5 years. Roger said I would need to file a new form 470." Jennifer Carter responded, "In that case you would in fact need a new 470. I am on a conference call right now. May I call you when once this call is over – should be in the next 20-30 minutes. A later email from you asks, "Quick question..... under the Internet access portion, because I do not have an RFP I must list the Internet Access Service I seek. Specify each service or function and quantity or capacity. Should I say Voice over IP telephony and for 200 users.

A copy of these email exchanges are attached for your review.

Regarding the specific e-mails referenced above, Okanogan was an existing customer and had been for almost four years as of the date of these e-mails. Trillion's E-Rate specialist in each instance was simply providing neutral guidance to an existing customer as is allowed under USAC rules. The E-Rate Specialist has been trained every year under the USAC service provider training and at all times carefully limits her responses to inquiries from customers to neutral information that would not favor any service provider over another. Please see the letter from Trillion to Scott Barash dated June 17, 2010 for details regarding Trillion's position on Form 470 communications.

Specifically, the email string below relates to the customer's inquiry as to whether a new Form 470

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would need to be filed per USAC rules. The E-Rate Specialist only asked to clarify whether the customer wished to exercise a voluntary extension of the term or not. The originating Form 470 had been filed prior to the option to request “voluntary extensions” in a Form 470, so the most conservative approach would have been to enter into a new, competitive bidding. Although a service provider would have the incentive to avoid the filing of a new Form 470, Trillion’s E-Rate Specialist nonetheless provided the neutral information that the customer would, in fact, have to file a new Form 470. This was to the disadvantage of Trillion, but it was the right thing to do. At no time did the E-Rate Specialist provide any suggestion or implication as to what Okanogan should put in a Form 470.

Email #1:

*From: CARI SHIFLETT [mailto:cschiflett@oksd.wednet.edu]*

*To: Jennifer Carter*

*Hi Jennifer,*

*I don’t know if I am supposed to ask you this or not....I might have made a mistake on my 470 to renew our phone contract. In the description I put Wide area network service/voice and data. Is that okay? I had that written down after I had talked to Roger about our contract. I hope it is okay.*

Email #2:

*“From: Jennifer Carter [mailto:jennifer.carter@trillion.net]*

*To: CARI SHIFLETT*

*Are you adding new services or just continuing on with the existing services? If this is just a continuation, then no new 470 is required since you are under multi-year contract. You will only need to file a 471. Let me know.”*

Email #3:

*“From: CARI SHIFLETT [mailto:cschiflett@oksd.wednet.edu]*

*To: Jennifer Carter*

*We want to keep our existing services, but renew our contract a year early for another 4 or 5 years. Roger said I would need to file a new form 470. Thanks for your help.”*

Email #4:

*“From: Jennifer Carter [mailto:jennifer.carter@trillion.net]*

*To: CARI SHIFLETT*

*In that case you would in fact need a new 470. I am on a conference call right now. May I call you when once this call is over – should be in the next 20-30 minutes.”*

In effect, a competitive bidding process was required under USAC guidelines and that competitive bidding process occurred. The district was completely capable of entertaining bids from other vendors, and, in fact, did just that. Nothing in the email strings indicates otherwise. As further evidence that this e-mail communication had no influence on the customer’s 470, a copy of the requested services, extracted directly from the Form 470 as posted on USAC’s website is below. It is clear that the eligible services requested would have been open to a wide range of bidders and in no way would have favored Trillion. There is no basis for denial of this application.

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Service or Function:	Quantity and/or Capacity:
Digital transmission services for voice, video and data	District-Wide
Wide area network connectivity	District-Wide
Voice over IP telephony	District-Wide

USAC's claim that "These email exchanges suggest you did not intend to entertain bids and have a fair and open competitive bidding process," is incorrect. The 470 that was ultimately filed was vendor neutral and provided Trillion with no advantage.

One item that is not referenced in the e-mail string is the fact that the customer was seeking a significant number of additional lines and that the customer had only one year remaining on the multi-year term. As is typical with phone service, a multi-year contract is the most cost-effective approach. It is normally cost-prohibitive for a new service provider to later implement an entire system to replace an existing service and add the additional lines, especially when it is replacing an existing contract that has one year remaining. The cost of adding additional lines to an existing service was the most cost-effective approach rather than installing a whole new system by a new service provider. This topic was discussed a letter from Trillion to Scott Barash dated June 17, 2010:

*"For phone service expansion, there are similar technical issues. Where an incumbent is providing phone service to the administrative offices, if an applicant seeks to add phone connections to the classrooms, it is technically impossible for another service provider to solve this integration, since having multiple providers would require management of two completely disparate systems with duplicative reporting and a loss of control between the systems. Therefore, if an applicant files a Form 470 for additional connections to have phones in every classroom, the bid is technically limited to the incumbent unless there is a wholesale change of the entire phone system."*

FCC rules require applicants to conduct a fair and open competitive bidding process free from conflicts of interest. See Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., SLD Nos. 321479, 317242, 317016, 311465, 317452, 315362, 309005, 317363, 314879, 305340, 315578, 318522, 315678, 306050, 331487, 320461, CC Docket Nos. 96-45, 97-21, Order, 19 FCC Rcd 6858, ¶ 60 (2003) ("Ysleta Order"); See also Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, 16 FCC Rcd 4028-4032-33, ¶ 10 (2000); Request for Review of Decisions of the Universal Service Administrator by SEND Technologies LLC, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, DA 07-1270 (2007); Request for Review of

Decisions of the Universal Service Administrator by Caldwell Parish School District, et al., Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, DA 08-449 (2008)(Caldwell Parish). Applicants cannot reveal to one prospective service provider information they do not provide to all. See Caldwell Parish, ¶ 16. Service providers are prohibited from filling out forms that require an applicant's signature and the 470 must be complete by the entity that will negotiate with prospective service providers. See Caldwell Parish, ¶ 17.

You have 15 days to respond to this request. Your response is due by the close of business June 24, 2010. Please reply via e-mail or fax. Please provide complete responses and documentation to the questions listed

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above. It is important that you provide complete responses to ensure the timely review of your applications. If you do not respond, or provide incomplete responses, your funding request(s) (FRNs) may be reduced or denied, or in the case of committed FRNs subjected to commitment adjustment.

If the applicant's authorized representative completed the information in this document, please attach a copy of the letter of agency or consulting agreement between the applicant and the consultant authorizing them to act on the school or library's behalf. If you receive assistance outside of your organization in responding to this request, please indicate this in your reply.

Should you wish to cancel your Form 471 application(s), or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding request(s). Include in any cancellation request the Form 471 application number(s) and/or funding request number(s). The cancellation request should be signed and dated and including both the name and title of the authorized individual.

Thank you for your cooperation and continued support of the Universal Service Program.

Pina Portanova  
USAC, Schools and Libraries Division  
Phone: 973-581-5016  
Fax: 973-599-6552  
E-mail: [pportan@sl.universalservice.org](mailto:pportan@sl.universalservice.org)

Sincerely,

**Trillion Partners, Inc.**

Attachments:

- [Trillion Account Summary and Review June 8, 2009 – Okanogan School District 105](#)
- [Letter to Mr. Scott Barash dated June 17, 2010](#)

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## Trillion Account Summary and Review

### Customer Information

**Name** OKANOGAN SCHOOL DISTRICT 105  
**Address** 115 Rose Street, Okanogan, WA, 98840  
**Billed Entity # (BEN)** 145394  
**Lead Sales Representative** David White, Becky Bayless  
**Customer of:** Gary No Roger Yes Steve  
**(Direct Sales Communications)** Gaessler Clague Davis No  
**Trillion/E-Rate Consultant**  
**Communication** None  
**Customer Status** Active

### Contract Information

ContractNumber	Award Date	End Date	470 Number	470 Date	FRN Number	471 Number
N/A	02/03/04	06/30/09	961680000493104	01/05/04	1196112	408312
NA	02/03/04	06/30/09	961680000493104	01/05/04	1299879	461454
NA	02/03/04	06/30/09	961680000493104	01/05/04	1439145	521975
NA	02/03/04	06/30/09	961680000493104	01/05/04	1617371	583535

### Extensions/Renewals/Upgrades

ContractNumber	Award Date	End Date	470 Number	470 Date	FRN Number	471 Number
NA	01/30/08	06/30/13	246560000654241	12/21/07	1704083	618729
N/A	01/30/08	06/30/13	246560000654241	12/21/07	1830991	670813

### Expense Summary

**Governing State** Washington  
**Business Meals** None  
**Gifts & Entertainment** None

### Customer Communications

**Communications Provided** **Begin Date** 6/1/2005 **End Date** 1/30/2008  
**Customer Communications Summary** Typical customer communications

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June 17, 2010

Mr. Scott Barash  
Chief Executive Officer  
Universal Service Administrative Company  
2000 L Street, N.W., Suite 200  
Washington, D.C. 20036

Dear Scott,

Thank you very much for the time you and your staff spent with us on the phone last Wednesday. Also, thank you as well for the resources you have allocated to complete the processing of the E-Rate applications for Trillion's customers. Although it appears progress has been made, as we discussed on the phone, USAC appears to have misapplied its own rules and misconstrued or ignored relevant factual information in connection with a large number of these applications. Trillion is on the verge of insolvency and time is of the essence, and therefore we are asking you to reconsider these applications.

Of the 50 applications that USAC reviewed on or prior to June 7, 2010, a full two-thirds (33 applicants) received a letter either indicating an intent to deny or seeking clarifications and that in some form threatened denial. This represents an extraordinarily high ratio of applicants who supposedly did not follow the rules, and is starkly inconsistent with Trillion's historical application approval rate and the results of USAC's comprehensive review of Trillion's customers in 2006.

There appear to be several common themes underlying USAC's preliminary determinations to deny these E-Rate applications. The first theme concerns allowable gifts, gratuities and meals that can be provided to an applicant by a service provider. We discussed this issue in our phone call, where you indicated that a school district must follow state and local procurement rules to be compliant, and acknowledged that the proposed rule put forth in the NOPR dated May 20, 2010 applying a more stringent set of rules around gifts, gratuities and meals has not yet been adopted. Therefore, we believe that all of the letters sent by USAC threatening denial for meals, gifts and gratuities that were within state and local guidelines should be rescinded and the subject applications approved. To do otherwise would have the effect of contradicting USAC's published guidance and retroactively applying a not-yet-adopted new standard in a discriminatory fashion to conduct that was fully compliant at the time. Please refer to our letter of June 8, 2010 for further detail on this issue.

This letter is intended to address the other common themes underlying USAC's prospective denials that we did not have an opportunity to discuss on the phone, which relate to:


- 1) Allowable Form 470-related communications allowable by a vendor

- 2) Allowable communications prior to a Form 470 being posted
- 3) Allowable communications by an incumbent vendor

As demonstrated below, it appears that USAC has not followed its own guidance, has misapplied rules and/or has misinterpreted facts related to these types of communications in connection with these applications.

### 1) Allowable Form 470-related communications

The following excerpts from USAC training materials published between 2007 and 2010 set out clear rules governing Form 470-related communications between an applicant and a vendor:



## Competitive Bidding

- Tips
  - If applicants ask you for assistance:
    - Refer them to existing sources
  - Review all requirements set out by the applicant and follow them
  - Keep records of bids submitted
  - Keep copies of contracts

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[www.usac.org](http://www.usac.org)

Source: USAC - Overview from the Service Provider Perspective - John Noran - Service Provider Training Schools and Libraries Division - April 18, 2007 – Atlanta • April 25, 2007 – Chicago



## Training for Applicants

- You can provide training to applicants on E-rate if your training does not give an unfair advantage
  - Your training can include neutral information, including references to USAC, state, and public websites and training materials
  - Ask yourself if the content of the same training provided by a competitor would concern you

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[www.usac.org](http://www.usac.org)

Source: USAC - What To Do and How To Do It - Mel Blackwell and John Noran - Service Provider Training Schools and Libraries Division - May 8, 2008 – Miami • May 14, 2008 – Salt Lake City



## Pre-bidding Discussions

- Service providers may:
  - Discuss their product offering with applicants
  - Educate applicants about new technologies
- Service providers may **NOT**:
  - Offer/provide vendor-specific language for RFP or the Form 470
  - Provide template RFPs or Forms 470
  - Offer/provide assistance with Tech Plan
  - Offer/provide assistance with RFP

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[www.usac.org](http://www.usac.org)

Source: USAC - Program Compliance for Service Providers - Catriona Ayer - Schools and Libraries Division - May 4, 2010  
– Los Angeles • May 11, 2010 – Tampa

## Competitive Bidding

- What is a service provider's role in the competitive bidding process?
  - Review posted Forms 470 and/or download Form 470 summary information
  - Respond to Forms 470/RFPs
  - Review applicant requirements and local and state procurement rules, including reasons for possible bid disqualification

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[www.usac.org](http://www.usac.org)

Source: USAC- Beginners Session for Service Providers - John Noran - Service Provider Training  
Schools and Libraries Division - May 4, 2010 – Los Angeles • May 11, 2010 – Tampa



## Requirements - Competitive Bidding

- The applicant must conduct a fair and open competitive bidding process
  - All bidders are treated the same
  - All bidders have equal access to information
  - All bidders know what is required of them
  - All bidders know any reasons for disqualification

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[www.usac.org](http://www.usac.org)

Source: USAC - Application Process - Schools and Libraries Division - Washington, DC • Seattle • Denver • Chicago • Newark • Los Angeles • Atlanta September/October 2008

To summarize this guidance, a service provider may not assist an applicant in the completion of a Form 470 or offer or provide vendor-specific language for a Form 470. A service provider may offer E-Rate education if the training is neutral in nature and does not provide an unfair advantage to the service provider. If asked for assistance by the applicant in completing a Form 470, the vendor should refer the applicant to existing resources. Once the Form 470 is filed, vendors are allowed to review the form, evaluate its requirements and ask clarifying questions so long as the answers provided by the applicant are available to all potential bidders.

As described in detail in our prior letters to Mel Blackwell of USAC dated April 17, 2009 and June 8, 2009, Trillion employees have been trained extensively regarding these requirements. Trillion has a long-standing policy requiring its employees to direct all E-Rate questions from an applicant to the company's internal E-Rate attorney or E-Rate specialist, who in turn have procedures in place to direct applicants directly to the USAC website for assistance.

Despite its published guidance, it appears that USAC has taken the position that virtually any communication between a vendor and applicant regarding a Form 470 is a basis for denial. An example of this is the letter received from USAC by St. Louis County Library dated June 2, 2010, which alleges that Trillion provided improper assistance to the applicant.

St. Louis County Library posted its Form 470 on August 29, 2008. The first communication between Trillion and the applicant, which occurred after the posting on or about September 8, 2008, is as follows:

"Dear Mr. Fejedelem ,  
>

> I am contacting you to request a copy of the RFP referenced on the 470  
> Application # 738980000679314 recently filed by St Louis County Library.  
>  
> Can you please forward me a copy of the RFP?  
>  
> Trillion is the leading provider of Broadband WAN and Voice over IP services for K-12 education.  
>  
> In addition to WAN services, Trillion offers a VoIP service that is Priority 1 E-Rate eligible and is enabling K-12's to enhance safety and communication in their schools with no install costs, money down, equipment purchases or maintenance fees.  
>  
> After reviewing the RFP, I would appreciate the opportunity to speak with you for a few minutes by phone to better understand the Broadband and IP Telephony needs for the your school district.  
>  
> Thank you very much,  
>  
> \*\* Jeanne Massey \*\*  
>  
> \* Trillion Partners, Inc. \*  
>

In support of its preliminary determination, USAC cites the following e-mail exchange:

**"9/24/2008 1:45PM**

Jake,

Just a couple of questions...

- 1) You have a total of 325 phones. Does the distribution matter, or do you want them to spread evenly across the 20 sites? Same question for the 25 extra voice mail boxes.
- 2) Are you going to want/need to keep all of the other ports (fax lines, data, TDD, etc) that are listed in the RFP?
- 3) Any idea what types of phones and in what quantities you will want at each site (basic users, mid-level admins, high-end execs)?

I think this is all I need. Thanks.

John

**9/24/2008 3:07PM**

Jake,

One other thing that we just discovered... you did not check the box seeking a multi-year contract (7b) on your 470. Was that intentional or an oversight?

John Masterson

**9/25/2008 9:17AM**

John,

*Multi-year contract was an oversight. We would be seeking a multi-year deal.*

*Enclosed is the telephone breakdown list (the number of jacks we have at each location).*

*Most sites will have basic user phones (cordless if possible). For high level execs, call forwarding to cell device is of far more importance than the type of desk phone.*

-Jake

**10/2/2008 3:04PM**

Jake,

*Would you please call me at your earliest convenience 913-269-7174. I want to make sure we're on the same page regarding your new 470. Thanks!*

John"

As USAC indicates, the only difference (other than the due date) between the original Form 470 and the new Form 470 posted on October 13, 2008 was that the multi-year box was checked.

The salient facts related to this application, as demonstrated by the communications set forth above, are as follows:

- Trillion was not in contact with this prospect prior to the posting of its original Form 470
- Trillion asked for the RFP via e-mail after the original Form 470 was posted.
- Trillion asked clarifying questions in order to better understand the service requirements (such as phone count by site) and asked whether the applicant was actually seeking a one-year term
- The applicant discovered its mistake and corrected the error by filing a new Form 470
- The RFP requirements and services requested were unchanged in the new Form 470
- Trillion had no agreement or understanding with the applicant of any kind

With this set of facts, Trillion is unsure as to how the USAC reviewer came to the following conclusion:

*"These e-mail exchanges suggest that it was pre-determined that St. Louis County Library would enter into a new contract with Trillion prior to the Form 470 being posted and prior to the 28 day competitive bidding*

*window. It also suggests that Trillion was intimately involved in developing the specifications the library would seek on its Form 470 and perhaps was involved in the drafting of the language to be used in the Form 470.”*

There is simply no basis for a conclusion that a contract was predetermined as a result of Trillion’s routine communications. Trillion could not have been involved in the development of the project specifications because those specifications were in the RFP which Trillion received only after the original Form 470 was posted and those specifications did not change from original to final Form 470 posting. It is obvious that Trillion’s clarifying questions led the applicant to discover an error in its original Form 470 that was subsequently corrected. These communications speak for themselves and do not support any reasonable interpretation to the contrary.


The St. Louis County letter is just an example of the flawed logic employed in a number of “intent to deny” letters based on Form 470-related communications with Trillion customers where:

- The reviewer incorrectly interpreted the proper chronology
- The decision is inconsistent with USAC rules and guidance
- The “facts” relied upon by USAC are incorrect
- The wording in the filed Form 470 uses language directly from USAC’s Eligible Services List
- The services requested are clearly open to many bidders

We urge USAC to revisit these applications with a view to applying a consistent and understandable standard that is consistent with its published guidance.

## 2) Allowable communications prior to Form 470 posting

With regard to marketing, product demonstrations and similar communications with a prospective applicant prior to the posting of a Form 470, USAC has offered the following guidance:



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Helping Keep Americans Connected


DO's

- Provide information to applicants about products or services – including demonstrations – before the applicant posts the Form 470
  - You can provide information on your available products and services before applicants file a Form 470
  - Once the Form 470 has been filed, you are limited to the role of bidder

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[www.usac.org](http://www.usac.org)

Source: USAC - Service Provider DO's and DON'Ts - Mel Blackwell and John Noran - Service Provider Training Schools and Libraries Division - April 18, 2007 – Atlanta • April 25, 2007 – Chicago



USAC  
Universal Service Administration Company  
Helping Keep Americans Connected

Training for Applicants

- You can provide information to applicants about products or services – including demonstrations – before the applicant posts the Form 470
- Once the Form 470 has been filed, you are limited to the role of bidder

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[www.usac.org](http://www.usac.org)

Source: USAC - What To Do and How To Do It - Mel Blackwell and John Noran - Service Provider Training Schools and Libraries Division - May 8, 2008 – Miami • May 14, 2008 – Salt Lake City



## Pre-bidding Discussions

- Applicants may:
  - Discuss their product offering with SPs
  - Learn about new technologies from SPs
- Applicants may **NOT** accept/use the following from service providers:
  - Vendor-specific language for RFP or the 470
  - Template RFPs or Forms 470
  - Assistance with tech plan
  - Assistance with RFP

4 www.usac.org

Source: USAC - Program Compliance - Helping You Succeed Schools and Libraries Division - Washington, DC • Newark • Atlanta • Chicago • Orlando • Los Angeles • Portland • Houston - September/October 2009



## Pre-bidding Discussions

- Service providers may:
  - Discuss their product offering with applicants
  - Educate applicants about new technologies
- Service providers may **NOT**:
  - Offer/provide vendor-specific language for RFP or the Form 470
  - Provide template RFPs or Forms 470
  - Offer/provide assistance with Tech Plan
  - Offer/provide assistance with RFP

4 www.usac.org

Source: USAC - Program Compliance for Service Providers - Catriona Ayer - Schools and Libraries Division - May 4, 2010 – Los Angeles • May 11, 2010 – Tampa

To summarize this guidance, prior to the posting of a Form 470, a vendor is allowed to provide general information regarding the vendor's products and services, discuss and answer questions regarding its product offering<sup>1</sup>, and provide product demonstrations<sup>2</sup>, including an illustration or visual representation

<sup>1</sup> American Marketing Association definition: A bundle of attributes (features, functions, benefits, and uses) capable of exchange or use; usually a mix of tangible and intangible forms. The terms and conditions (price, quantity, delivery date, shipping costs, guarantee, etc.) under which a product or service is presented to potential customers

Blue Mine Group definition: Product Offering has 5 key elements which include the product definition, customer experience, product pricing, collaboration, and differentiation.  
[http://www.blueminegroup.com/articles/1\\_winning\\_product\\_offering\\_020810.php](http://www.blueminegroup.com/articles/1_winning_product_offering_020810.php)

<sup>2</sup> American Marketing Association definition: An aspect of the sales presentation that provides a sensory appeal to show how the product works and what benefits it offers to the customer

of how a prospective applicant's network might be configured as well as generic pricing and other indicative terms.

In many instances, however, USAC has used permissible pre-Form 470 communications as the basis for potential denial of applications filed by Trillion's customers. An illustrative example is the letter to Nogales Unified School District 1 dated June 9, 2010. This letter states:

*"Correspondence provided by you shows that there were several discussions beginning January 2006 which predate the filing of the Fund Year 2008 Form 470 used to establish a new contract with Trillion. The Form 470 used to establish this contract with Trillion was posted October 26, 2007. The correspondence that predates that Form 470 shows that discussions took place between Trillion, yourself, and other members of your entity or state entity. These discussions included, among other things, the following:*

- *Meetings occurred discussing possible WAN options Trillion can offer- January and February 2006*
- *Trillion providing a design and preliminary price estimate- February 2006 and April 2007*
- *Discussions to follow-up on the preliminary estimate provided by Trillion –June 28, 2007*
- *Meetings with Trillion Sales representatives- August 2007*
- *Meetings to discuss funding - September 2007*

*A copy of these email exchanges are attached for your review. These email exchanges suggest it was pre-determined NOGALES UNIFIED SCHOOL DIST 1 would enter into a new contract with Trillion prior to the Form 470 being posted and prior to the 28 competitive bidding window. It also suggests Trillion was intimately involved in developing the specifications you would seek on your Form 470."*

The reviewer fails to mention that, on January 12, 2006, Nogales School district posted a Form 470 (# 884590000574746) for the services that Trillion offers. The reviewer also fails to mention that Trillion's first contact with Nogales was after the Form 470 was posted. Therefore, Trillion had every right to act as a bidder, provide a proposal and clarify its proposal as the e-mail record suggests. It should be noted that Trillion did not win this bid.

During the one-year period from June of 2006 until the end of June 2007, Trillion met with the school district a total of five times, none of which occurred during a bid cycle. Trillion provided product offering information to a prospective customer



as well as a preliminary design and price estimate. Keep in mind that Trillion participated in a previous bid cycle that Trillion did not win and had information from this bid cycle on which to base its estimate. USAC guidance establishes that Trillion has the right to discuss its product offering with a prospective applicant, and the chronology identified by USAC merely confirms that these permissible discussions occurred.

It is standard industry practice to provide product quotations to potential customers. In the normal course of business, school districts across the country ask for budgetary information and service providers routinely respond to these requests. Sometimes a price quotation is in the form of a tariff and other times in the form of a budgetary estimate, all of which are well within the definition of “product offering information.”

There is no data whatsoever indicating that a contract was “pre-determined” for Trillion. Keep in mind that the applicant’s Form 470 requested *“Digital Transmission Services - Wireless or Fiber Optic based: Leased Wireless or Fiber Optic Based WAN for eleven campuses including District Office Hub”*. At the time of this bid cycle, Trillion only offered Wireless WAN and did not offer Fiber WAN services. If the outcome was pre-determined for Trillion, presumably the applicant would have requested wireless WAN services only. To the contrary, publicly available data shows that there were multiple bidders for this project that included both wireless and fiber providers.

The summary of the facts are as follows:

- Trillions first communication occurs after the applicant files a Form 470, and Trillion is not selected on that bid
- Trillion met with the school district several times over an almost two year period to discuss its product offering, all of which is allowable under USAC rules
- There are no USAC rules which limit the number of times a service provider can meet with an applicant.
- No communication whatsoever over that two-year period indicates a contract is pre-determined
- Trillion does present a pre-design and budgetary estimate, which is allowable under USAC rules
- There is no communication at all between the parties regarding any Form 470 posting
- The Form 470 posting is fair and open and is inclusive of competitive services that Trillion could not provide

With this set of facts, we cannot see how the reviewer could have possibly come to the conclusion that a decision was pre-determined and that Trillion provided impermissible guidance on the applicant’s Form 470. It is clear that, in this case and in other similar cases, USAC has drawn the incorrect and unwarranted

conclusion that routine contact with a potential applicant is a basis for denial in direct contravention of its own guidance.

### **3) Allowable communications by an incumbent vendor**

Although this theme is very similar to the prior theme and is governed by the same set of rules, there is a fundamental difference in the relationship between an applicant and an incumbent provider in that the incumbent provider will necessarily have numerous communications with the applicant regarding the existing services provided and is the logical provider of choice when the applicant seek service additions or upgrades. As a practical matter, a new vendor will often be precluded from providing service additions upgrades due to technical problems and other inefficiencies associated with having multiple service providers on the same project. This problem arises in many scenarios, including MPLS WAN networks, large-scale layer 3 WAN networks, and interconnection VOIP expansion.

In the case of an MPLS network, if an applicant wanted to add a site or increase bandwidth to only a portion of the network, only the incumbent can offer this solution. The primary reasons are the technical limitations of an MPLS network. In an MPLS WAN, if any changes are going to occur to that network, no other alternative service provider's network will actually work with the incumbent's network. Therefore, without a wholesale change to the entire network, bandwidth upgrades to individual sites, as well as site additions to the network, can only be done by the incumbent MPLS provider. Significant issues with an alternative provider would come into play, such as the requirement for duplicative equipment and software, loss of network security and quality of service, the need to hand off traffic between providers and the requirement for "out of band" internet monitoring.

Similar issues arise with large-scale layer 3 WAN networks. If there is a network covering a large area serving multiple locations with network-wide routing, there is really no technical difference between this type of network and an MPLS network. Therefore, if an applicant were seeking bandwidth upgrades to a portion of the network, or if new sites were to be added, the only viable provider is the incumbent. For interconnected VoIP expansion, there are similar technical issues. Where an incumbent is providing phone service to the administrative offices, if an applicant seeks to add phone connections to the classrooms, it is technically impossible for another service provider to solve this integration, since having multiple providers would require management of two completely disparate systems with duplicative reporting and a loss of control between the systems. Therefore, if an applicant files a Form 470 for additional connections to have phones in every classroom, the bid is technically limited to the incumbent unless there is a wholesale change of the entire phone system.

In any of the three scenarios, due to the technical limitations and impracticalities,

the applicant must rely on the incumbent provider. Keep in mind that the incumbent provider by definition has critical knowledge that alternative providers do not. An incumbent can see the applicant's network statistics, how much bandwidth is being utilized, where the bottlenecks are, and what can be done to improve performance. If an incumbent service provider realizes that a portion of a network is running to capacity, there is every reason to inform the applicant of this fact. No guidance is provided by USAC in this case, but it would seem to be in the best interest of the applicant for the service provider to provide this useful information.

USAC fails to recognize the practical realities of the incumbent provider scenario. An illustrative example is a letter from USAC received by Northeast Texas Regional Education Telecommunications Network (NTRETN) dated June 4, 2010. In this letter, USAC indicates its intent to deny the application because NTRETN engaged in numerous discussions with Trillion employees beginning in 2004 through the award of multiple contracts. USAC claims that these discussions were not general marketing discussions, and further claims that Trillion was provided inside information with regard to the applicant's needs.

In order to put USAC's claims in context, it is important to provide some background regarding NTRETN and the services Trillion provides to it. NTRETN is a consortium of school districts located in Texas' Region 8 Education Service Center (ESC). The Region 8 ESC is one of 20 education service centers in Texas. The vision of Region 8 is "to develop a district-wide systemic culture to sustain a high-performing learning community." To achieve this vision, Region 8 delivers a variety of services, including distance learning, to each school district it serves. To provide these services, the NTRETN consortium was established to deliver a sustainable wide area network (WAN) in rural Northeast Texas to serve the schools in the Region 8 ESC area. NTRETN consists of 51 school districts in northeast Texas, including 150 campuses, with over 150,000 students. The majority of its member school districts are located in rural communities. NTRETN has an elected board of directors consisting of 12 school district superintendents and the Region 8 ESC Executive Director.

Trillion provides a customized network for NTRETN that links together school districts across a large, rural portion of Texas. The project to build the NTRETN was massive in scope because the network was required to cover over 9,000 square miles of geographic terrain. Trillion's network for NTRETN services 88 locations, 652 route miles (covering 9,000 square miles), and has three connections, or points of presence (POPs), out to the Internet.

To date, the implementation of this network has involved an investment of \$5,865,597 in capital expenditures. It has required heavy construction in school yards, coordination of utility services, adherence to strict safety guidelines, management of network addressing and protocols and much more. In fact, the project was so large and complex that it had to be built in two technically distinct

phases over the course of 19 months. Given the project's scope, it required a tremendous amount of interaction and coordination among Trillion's employees and the NTRETN team.

USAC does not take into account that a project of this magnitude requires constant communication between the parties in order to be successful, which type of communication is in accordance with USAC guidelines. USAC also does not take into account the fact that it is nearly impossible from a technical standpoint for another service provider to provide bandwidth upgrades to a portion of this comprehensively routed and managed IP network without a complete replacement of the entire network.

In regards to the communication record, in the original build of NTRETN's network, not all of the NTRETN member school districts were connected to the network. The neighboring consortium, Region 10, also had not provided adequate Internet and WAN services to its member school districts. As a result, NTRETN had received inquiries from neighboring school districts regarding the technical feasibility of adding schools to the then-existing network. There is also mention in the e-mails of the need for additional bandwidth and NTRETN's interest in an assessment of the technical feasibility of adding a 3rd POP in Texarkana. NTRETN wanted to understand whether Trillion could expand the existing network to accommodate the additional school districts, including Region 10 schools, and whether this additional usage would negatively impact the existing network.

These inquiries are analogous to inquiries that a school district might make of its incumbent communications provider to assess whether a T-1 could be provided to connect to an additional site that is not served, whether additional capacity could be added to an existing MPLS circuit, or whether an additional T-1 of Internet capacity could be added to a currently-served site. Discussing the technical feasibility and impact of adding a T-1 to a site does not run afoul of a fair and open bidding process, and nor does discussing the feasibility and impact of adding an additional site to an existing network. These type of questions are commonplace in the industry and are part of a normal dialogue between an applicant and its existing service provider. To require otherwise would be highly inefficient and counter-productive.

The relevant facts with respect to NTRETN are as follows:

- The NTRETN network is massive, covering 9,000 square miles
- The school districts served are generally very rural
- Over \$5,000,000 in capital has been invested in the network
- An applicant is allowed to ask the technical feasibility of network upgrades
- The communication record shows normal discussions between an applicant and an incumbent who provides such a complex network
- There are technical limitations on the ability of another service provider to

connect to a single site or upgrade only segments of the network without complete replacement of the entire network

With this set of facts, we do not see how the reviewer can come to the conclusion that anything but normal course discussions took place between an applicant and their incumbent service provider. Denial is particularly unwarranted in cases of this type since the result would be to force the applicant to make an economically inefficient choice of an alternate provider or to forego the requested services entirely.

## **Summary**

Trillion understands that setting a deadline can force hasty, premature decisions. The preliminary determinations of USAC to deny Trillion's customer applications cannot withstand even casual scrutiny as they contravene USAC's own guidance and are based on numerous factual errors. These determinations are clearly motivated by a desire to "move the pile" rather than an effort to get at the real facts and to fulfill the purposes of the E-Rate program.

Unfortunately, we are now out of time. While these errors can conceivably be remedied on appeal, our company will likely not be alive to see the end of that process. The sad part is that the ones really being hurt in this process are the students of the rural and underserved areas of this country that Trillion serves. Don't let these kids be without the technology that keeps them on the same playing field as the urban kids. We urge you to direct your staff to withdraw these ill-considered "intent to deny" letters and to make thoughtful determinations on the merits of these cases.

Sincerely,

Trillion Partners, Inc.